IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 5 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO. 1151 OF 2006

E-City Entertainment (I) Pvt. Ltd. ... Petitioner.

AND

COMPANY PETITION NO. 6 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO. 1152 OF 2006

E-City Real Estates Pvt. Ltd. ... Petitioner.

Mr. Gaurav Joshi i/b. Crawford Bayley & Co. for the Petitioner.
Mr. C.J. Joy with G.C. Mishra for the R.D.C.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. The sanction of the Court has been sought under Sections 391 to 394 of the Companies Act, 1956 to a scheme of demerger. As a result of the scheme as proposed, certain assets of the transferor company are to stand transferred to and vested in the transferee company. The transferor is the Petitioner before the Court in Company Petition 5 of 2007 while the transferee is the Petitioner in Company Petition 6 of 2007.

2. In so far as compliance with statutory requirements is concerned, learned Counsel states before the Court that : (i) The Meeting of the shareholders was dispensed with in view of the consents that were furnished; (ii) Meetings of the secured and unsecured creditors were dispensed with on an undertaking to furnish individual notices; and (iii) An affidavit of service has been duly filed.

3. The Regional Director has filed an affidavit in reply raising three issues which are as follows :-

> "(a) As per clause 11 of the scheme upon the scheme becoming effective, the Resulting Company shall increase its authorised share capital to Rs.35 crores. Hence the Resulting Company may be directed to comply with the provisions of sections 94/97 r.w. Schedule X of the Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies;
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> (b) The Petitioner companies may be directed to file affidavit of service for issue of individual notices to all the secured and unsecured creditors at the time of hearing of the petition; and

(c) The Registrar of Companies, Mumbai has filed prosecution under Section 211(7) on 06/10/2005 against the M/s. E-City Entertainment (India) Pvt.Ltd. and next date of hearing is 19/05/2007."

4. In so far as the first issue is concerned, Counsel for the Petitioners stated that necessary compliances shall be carried out. The second requisition has been duly complied with by filing an affidavit of service. In so far as the third requisition is concerned, the Court has been informed that since the offence under Section 211(7) of the Companies Act, 1956 is compoundable and an application is the process of being filed, but in any case, the scheme will not affect the prosecution that has already been launched against the transferor. In my view, the prosecution that has been launched under Section 211(7) for non-compliance of the requirement of filing the balance-sheet does not obstruct the implementation of the scheme since in any event, the transferor against whom the prosecution has been launched will continue to remain in existence even after the scheme of demerger. It is, however, clarified that nothing stated in this order shall affect the said prosecution.

5. There is no other objection. All the necessary statutory requirements have been duly complied with.

6. In the circumstances, Company Petitions 5 of 2007 and 6 of 2007 are made absolute in terms of prayer clauses (a) to (f).